

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-468-C - ORDER NO. 95-1510 ✓

SEPTEMBER 8, 1995

IN RE: Application of EqualNet Corporation for)
a Certificate of Public Convenience and) ORDER ON
Necessity to Operate as a Reseller of) RULE TO SHOW
Intratstate Telecommunications Services) CAUSE HEARING
Within the State of South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of Commission Order No. 95-656, dated March 17, 1995, in which the Commission ordered EqualNet Corporation (EqualNet or the Respondent) to appear and show cause why its Certificate of Public Convenience and Necessity should not be revoked for unauthorized switching of customers' interexchange carriers and for the employment or use of unfair and/or fraudulent marketing techniques and practices.

On August 16, 1995, at 10:30 a.m., a public hearing regarding the Rule to Show Cause was held in the Commission's hearing room at 111 Doctors Circle, Columbia, South Carolina. The Honorable Rudolph Mitchell, Chairman, presided. The Commission Staff was represented by Florence P. Belser, Staff Counsel; the Respondent was represented by Frank R. Ellerbe, III, Esquire. April Sharpe, Manager of the Consumer Services Department of the Commission, testified on behalf of the Commission Staff, and Mark Davis and

Chris Kellahan appeared as public witnesses. Dean H. Fisher, Senior Vice President and General Counsel of EqualNet, testified on behalf of the Respondent.

Mrs. Sharpe testified regarding complaints concerning EqualNet received by the Commission's Consumer Services Department. According to Mrs. Sharpe's testimony, the Commission's Consumer Services Department received thirteen complaints relating to EqualNet during the period from January 17, 1995, to July 10, 1995. Mrs. Sharpe stated that the complaints generally regarded misleading or deceptive marketing practices and unauthorized switching of long distance service (also known as "slamming").

Two public witnesses appeared and testified before the Commission. Mark Davis testified that his business telephone lines were switched from AT&T to EqualNet without authorization and in spite of a "PIC freeze" on the lines. Chris Kellahan, Sales Manager of Farmers Long Distance, also appeared as a public witness.

Regarding the testimony of the public witnesses, counsel for the Respondent made separate objections to portions of each witness' testimony. The Respondent objected to portions of each witness' testimony as hearsay testimony. The Commission sustains the objection of the Respondent as both witnesses attempted to testify about statements recounted to them by third persons which were offered to prove the truth of the matter asserted (i.e. that the Respondent engaged in the practice of "slamming"). Therefore,

the Commission will strike and not consider those portions of the testimony which violated the hearsay rule.

Mr. Fisher testified in response to the Rule to Show Cause Order. Mr. Fisher explained that during the time period in question EqualNet had two new marketing agents that were submitting extremely large numbers of orders for processing. To meet the demand of this rapid growth, EqualNet converted to using a welcome package with postcard verification on new customer orders instead of the voice verification previously used. Mr. Fisher also explained that the large number of orders also caused a backlog at the AT&T processing center that further caused confusion on the part of some customers. Mr. Fisher testified that the number of complaints caused concern at EqualNet, and that in response to those complaints, EqualNet has made arrangements to contract for independent voice verification again. In addition to changing the verification method, Mr. Fisher stated that EqualNet has prohibited one marketing company from marketing products over AT&T's network and that the other marketing company completely stopped their operations at EqualNet's request to allow for retraining of all sales staff before being allowed to resubmit orders under EqualNet's system.

Based upon the testimony and evidence presented at the Rule to Show Cause hearing, the Commission is of the opinion, and so finds, that the Respondent's authority to carry on intrastate telecommunications business in South Carolina should not be revoked and that no probationary period should be imposed upon the

Respondent. The Commission finds the explanations recounted by Mr. Fisher to be plausible and is impressed by the actions taken by the Respondent in correcting the problem of complaints even before the Rule to Show Cause Order was issued. Although customer complaints were received by the Commission, EqualNet employed customer verification methods for customer changes which were approved by the Federal Communications Commission (FCC). The Commission believes that EqualNet has undertaken appropriate steps to cure the type of customer complaints that were received by the Commission.

IT IS THEREFORE ORDERED THAT:

1. This Rule to Show Cause is hereby dismissed.
2. The Respondent's motions to strike hearsay testimony are granted.
3. Staff shall closely monitor the marketing techniques used and employed by EqualNet, and Staff is instructed to report to the Commission all confirmed cases of slamming by EqualNet.
4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)